

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELCOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation)	
For Declaratory Orders to Ensure)	Docket No. 05-28
Verizon-Massachusetts Compliance)	
With Resale Obligations with Respect)	
To Customer Specific Pricing Contracts)	

REPLY BRIEF OF PETITIONER DSCI CORPORATION

Introduction

Petitioner DSCI Corporation (“DSCI”) submits the following Reply to arguments presented in the Initial Brief of Verizon New England, Inc. d/b/a Verizon-Massachusetts (“Verizon”) in this docket dated August 9, 2005 (“Verizon Brief”). For the reasons stated in pre-filed testimony of DSCI’s President Sean Dandley (“Dandley Testimony”),¹ the hearing testimony of Mr. Dandley and Verizon’s witnesses,² and DSCI’s August 9, 2005 Initial Brief (“DSCI Brief”), the Department of Telecommunications and Energy (“Department” or “DTE”) should address and remedy the Verizon unlawful, unreasonable and discriminatory practices that have prevented DSCI from reselling Verizon customer specific pricing (“CSP”) contracts and similar arrangements³ to DSCI customers, as required by both federal and state law.⁴

¹ Exhibit (“Exh.”) DSCI-18.

² The Transcript of the July 26, 2005 hearing is cited herein as “Tr. ____.”

³ CSPs also can be referred to as “Contract Services Arrangements,” “Special Pricing Arrangements,” or “Individual Case Basis Rates.” See Exh. DSCI-1 (DTE Notice to Massachusetts Telecommunications Carriers, April 6, 2004, Use of Contract Services Arrangements), p. 1. As used herein, CSP refers to all such special contract arrangements.

⁴ See 47 U.S.C. § 251(c)(4)(resale obligations); 47 CFR §§ 51.601 et seq., (resale obligations, including prohibitions on unreasonable class distinctions); see also G.L. c. 159, §§ 10, 12-14, 16 and 19 (applicable state law provisions).

Argument

I. Verizon Has Failed to Show that its Restrictions on DSCI's Resale of the COMA CSP are Reasonable and Nondiscriminatory.

Verizon's arguments (Verizon Brief at 8-14) that seek to defend its limitation on DSCI's resale of the CSP with the Commonwealth of Massachusetts ("COMA Contract") only to the "eligible entities" as specified between Verizon and the Commonwealth were anticipated by DSCI and should be rejected for the reasons stated on pages 6-9 of DSCI's Brief. Despite the repeated assertions of Verizon's relationship manager with the Commonwealth (Carolyn Jussaume) that her sole client is somehow "unique,"⁵ Verizon has in fact identified no material differences between the Commonwealth and large multi-location commercial customers. As highlighted in DSCI's Brief, both the Commonwealth and large commercial customers can use complex requests for information and proposals to solicit bids from telecommunications providers, take advantage of their market power to secure advantageous rates, terms and conditions, include in the bid proposals very detailed legal requirements and social goals, and require sufficiently complex handling to require dedicated servicing staff on the part of both Verizon and the end user.⁶

Verizon's argument that CSP resale should be based upon all the "material provisions of the CSP," specifically including the "'eligible entities' defined in those agreements" (Verizon Brief, pp. 9-10), makes no logical sense and would eviscerate legal rights to resell CSPs. If true, Verizon could choose to define the "eligible entities" in the

⁵ Exh. VZ-1 (Jussaume Testimony), pp. 5-6; see Tr. 53-57 (cross examination of Ms. Jussaume on "uniqueness" claim).

⁶ DSCI Brief at 7-8 (citing relevant information from record). Mr. Dandley testified at the hearing that in his extensive experience as a vendor selling to both government and private end users, a governmental RFP is indistinguishable from a commercial RFP if the names were whited out. Tr. 8-9.

particular CSP to require CLECs to resell a Bank CSP only to a Bank, a University CSP only to a University, and so on. Verizon cannot be allowed the power to negotiate class definitions in a way that limits third party resale rights, an absurd and anti-competitive result. Verizon's interpretation also conflicts squarely with federal regulations, which limits class-based restrictions on resale to residential versus business classes⁷ and places squarely on the ILEC the burden of proving to a State Commission that class-based restrictions on resale of a CSP are both reasonable and non-discriminatory.⁸ Verizon has not met its burden with respect to the COMA Contract.

II. Verizon Has Improperly Denied Use by DSCI of Tariffed Corporate Rewards Usage Rates.

Verizon's brief attempt to defend its last minute denial of DSCI's access to Corporate Rewards usage rates (Verizon Brief at 14-15) does not cite any tariff language that would support any legal limits on DSCI's ability to use Corporate Rewards usage rates in conjunction with the COMA Contract per-line rates.⁹ The Corporate Rewards tariff expressly provides to the contrary that CSP customers can avail themselves of all Corporate Rewards benefits other than access line discounts¹⁰ and are disqualified from Corporate Rewards usage rates only to the extent their calls are already subject to a CSP "plan."¹¹ Verizon has admitted that that COMA CSP does not include usage rates or a

⁷ 47 CFR § 51.613(a)(1).

⁸ 47 CFR § 51.613(b).

⁹ By last minute, DSCI notes that Verizon agreed to let DSCI use Corporate Rewards only to reverse positions when DSCI filed the instant Complaint. Exh. DSCI-18 (Dandley Testimony), at p. 7.

¹⁰ See Exh. DSCI-19 (Verizon Tariff 10, Part A, Section 15, p. 13).

¹¹ Id., p. 15.

usage plan.¹² Contrary to Verizon's blatant effort to limit DSCI to use the Customer 38 usage rates in all instances – rates DSCI is unwilling to use without complete information on terms and conditions that Verizon is unwilling to provide without Department intervention¹³ – nothing in the Corporate Rewards tariff, the COMA Contract tariff or the Customer 38 CSP tariff prevent DSCI and other COMA resellers from using Verizon usage rates that best meet the customer's needs, including Corporate Rewards.¹⁴

III. The Department Should Adopt DSCI's Reasonable Proposal for Responding to Requests for CSP Resale Information.

Verizon's rejection of DSCI's proposed deadlines for Verizon to respond to a CSP resale inquiry (Verizon Brief at 18-19) misstates the DSCI proposal and fails to acknowledge the full extent of the Verizon behavior that lead DSCI to request Department-established time limits. First, contrary to Verizon's Brief, DSCI did not limit Verizon's response period to only 14 days – DSCI agreed to afford Verizon an additional 14 days in special circumstances.¹⁵ DSCI's 14 to 28 day proposal is reasonable on its own terms and compares favorably with Verizon's target period for responding to a CLEC's CSP resale inquiry (ten business days).¹⁶ It is also longer than the Verizon Retail time periods for securing approvals to offer CSP pricing to potential customers in competition with CLECs (five-to-25 days).¹⁷ CLECs cannot exercise their rights to

¹² Exh. VZ-2 (McCann Testimony) at 6; Exh. DSCI-VZ-11.

¹³ DSCI Brief, pp. 13-14.

¹⁴ See DSCI Brief, pp. 10-12 (including tariff page cites).

¹⁵ Exh. DSCI-18 (Dandley Testimony), pp 14-18.

¹⁶ Tr. 93-94 (McCann hearing testimony); see also Verizon Brief, p. 19.

¹⁷ Exh. DSCI-VZ-1-7 Supp. (Verizon Retail CSP Preapproval Process); Tr. 15-16 (Dandley testimony that Verizon Retail CSP Approval Process could be as short as five days and not longer than 25 days).

employ CSP resale to serve customers if they cannot receive timely responses to requests for full disclosure of applicable rates and terms, so that they can respond promptly to marketplace opportunities.

Second, Verizon underplays its responsibility for last minute policy reversals and excessive delays that make DSCI unwilling to accept Verizon's bare bones and unpublicized CSP response process without a supporting Department order.¹⁸ Without rehashing all of the many delays outlined in the Complaint and Mr. Dandley's testimony, DSCI discussed with Verizon transitioning DSCI's entire customer base over the COMA Contract as early as July 2004, without Verizon ever mentioning that resale would apply only to DSCI's agency customers and other entities identified in the COMA Contract.¹⁹ Even after Verizon asked for, and DSCI provided, a "formal" request for CSP resale in October 2004, it still took two months for Verizon to work through issues with DSCI and grant approval to resell the COMA Contract in December 2004.²⁰ Once the resale agreement was signed, starting in February 2005, DSCI engaged in joint planning activities with Verizon Wholesale management as to the details of the transition of the end users to the CSP resale platform, without any limitation to the eligible entities

¹⁸ See Tr. 87-90 (cross examination of Ms. McCann who acknowledged that the cursory one-page form was developed without input of DSCI or any other CLEC, was not provided to DSCI until DSCI expressly asked for it, was not circulated by Verizon to CLECs via industry notices or other means of transmitting business information to CLECs, and did not have any form of accompanying instruction sheet for CLECs to fill out).

¹⁹ Exh. 18 (Dandley Testimony), p. 5.

²⁰ Tr. 21-22 (Dandley hearing testimony that Verizon asked for submission of a "formal" request for resale in the middle of discussions); Exhibit DSCI-6 (December 17, 2004 Dandley e-mail to Verizon confirming COMA Contract approval).

identified in the body of the COMA Contract.²¹ Only on March 8, 2005, did Verizon's counsel to the Wholesale Group send his e-mail seeking to clear up "confusion about the class of eligible customers" and imposing a class limitation on DSCI's resale rights.²² This belated change of position on the part of Verizon is unacceptable and cannot be allowed to continue. Verizon cannot take eight months (from July 2004) or five months (from October 2004) or three months (from December 2004) or one month (from February 2005) to clear up "confusion" with respect to a particular CSP to be resold.

The COMA Contract is not the only instance of excessive delays. With respect to the Customer 38 Contract, even if one assumes Verizon genuinely failed to understand that Mr. Dandley's December 17 e-mail applied to both the COMA and Customer 38 CSPs,²³ it took at least another two-and-a-half months after DSCI's intentions were made crystal clear (from January 10, 2005 to March 21, 2005) for Verizon to disclose the volume commitments Verizon planned to require with respect to the Customer 38 CSP;²⁴ and then it took another two months (from March until May 21, 2005) for Verizon to respond to DSCI's inquiries seeking to identify the tariff provisions that would apply in the event that DSCI failed to meet the stated volume commitments.²⁵ Verizon still

²¹ See Exh. DSCI-8 (e-mail correspondence back and forth between DSCI and Verizon Wholesale regarding implementation issues regarding COMA Contract without limitation to COMA "eligible entities").

²² Exh. DSCI-10 (March 3, 2005 Soundarajan e-mail).

²³ See Tr. 21-24 (Verizon cross examination of Mr. Dandley seeking to justify Verizon's delay until January in starting to look for Customer 38 information).

²⁴ Compare Exh. DSCI-7 (containing January 10, 2005 Dandley confirming e-mail for Customer 38 Agreement) and Exh. DSCI-17 (Verizon March 21, 2005 Soundarajan e-mail specifying volume commitments but noting that if commitments were not met prices would be negotiated or "subject to tariff").

²⁵ See Exh. DSCI-VZ-10 (referencing May 21, 2005 date when Verizon finally provided the DSCI its requested tariff citations).

refuses to inform DSCI of its position on whether customer switches will trigger termination liability on the part of DSCI or its customers, a critically important term for DSCI.²⁶

CSP resale cannot possibly take place with this level of delay and uncertainty, especially when Verizon Retail can have its retail CSP offerings in the hands of an end user within not more than 25 days. A Department order that would require Verizon to disclose all terms and conditions within a 14 day period, with one 14 day extension in special circumstances, is a reasonable and necessary step to make CSP resale a feasible option for DSCI and other Massachusetts CLECs.

IV. The Department Has Statutory Authority to Fine Verizon for Noncompliance with CSP Resale Obligations.

Several sections in Chapter 159 authorize fines on Verizon where needed to address unreasonable and anti-competitive practices.²⁷ DSCI is aware of only a few circumstances where the Department has imposed fines under any authority,²⁸ but Chapter 159 provides ample authority for the Department to impose fines where consistent with statutory intent. Verizon for its part relies only on a single 40-year old

²⁶ DSCI Brief, pp. 13-14. Due to the need to avoid unnecessary duplication, DSCI has not provided full treatment of its efforts to identify a CSP to resell to DSCI's customer at the Colonial Automotive Group. DSCI got frustrated by the "Go Fish" nature of the Verizon responses – even though DSCI sought to apply a standard Verizon pricing model, Verizon kept finding allegedly disqualifying elements. See Exh. 18 (Dandley Testimony), p. 13.

²⁷ See, e.g., G.L. c. 159, § 12 (granting Department general supervision and control over telecom common carrier services); § 13 (authorizing Department investigations into rates, charges, regulations, practices and services of common carriers); § 14 (allowing the Department to impose reparations against common carriers that violate tariff obligations); § 16 (allowing Department to correct rates, practices, and service of common carrier).

²⁸ In addition to Verizon's fines under the performance assurance and carrier to carrier plans referenced during the Department's cross examination at the July 26, 2005 hearing, see, e.g., DTE Docket Nos. 99-271 and 03-50, the Department has imposed monetary fines on CLECs and payphone providers for failing to comply with reporting requirements in the CLEC Entry Order (DPU 93-98), and both G.L. c. 159, § 12 and G.L. c. 166, §§ 11-12. E.g., DTE Investigation of CLECs, Docket Nos. 02-13 (2002).

water company rescript opinion by the Appeals Court to support its claim that the Department lacks statutory fining authority.²⁹ Nevertheless, Whitinsville itself relies on an even earlier Supreme Judicial Court decision which contrasted the lack of fining authority with respect to water and certain electric operations with the Department's broader assessment authority with respect to common carriers (such as Verizon) pursuant to G.L. c. 159, § 14.³⁰

Accordingly, DSCI requests that the Department impose a fine against Verizon, payable to DSCI, in an amount the Department deems just to address Verizon's noncompliance with its requirements under 47 U.S.C. § 251(c)(4), federal regulations, and Chapter 159 of the General Laws.

Conclusion

Accordingly, for the reasons stated above and in its Initial Brief, DSCI requests that the Department Order the following relief:

1. Order Verizon to make available the COMA Contract CSP to DSCI for resale to its customers and reject as unreasonable and discriminatory Verizon's claim that it can limit DSCI's ability to resell the COMA Contract to the self-selected customer classes Verizon has identified;
2. Order Verizon to allow DSCI to combine Corporate Rewards tariffed services with the COMA Contract;

²⁹ Verizon Brief, pp. 19-20 (citing Whitinsville v. Cavich, 24 Mass. App. Ct. 925, 926 (1987)(rescript opinion)).

³⁰ See Whitinsville, 24 Mass. App. Ct. at 926 (citing Metropolitan District Commission v. Department of Public Utilities, 352 Mass. 18, 26 (1967)("The department was correct in ruling that it had no power to award reparations [against Boston Edison]. Such as power must be expressly conferred by statute, as it was in the case of carriers (G.L. c. 159, § 14)")(emphasis added)).

3. Order Verizon to respond to DSCI's remaining issue regarding Verizon's interpretation of termination language in the Customer 38 Contract, so that DSCI can decide whether to use that CSP in combination with the COMA Contract;
4. Order Verizon to provide prompt, complete and documented responses to requests seeking to determine whether DSCI or other CLECs qualify for resale of a CSP, within 14 days of a request, with one 14 day extension available in special circumstances, or such other reasonable schedule as determined by the Department;
5. As it sees fit, the Department should impose a monetary fine on Verizon, to be paid to DSCI, as reparation for the substantial delays and lack of response to DSCI's requests to provision services under relevant CSP terms and conditions;
6. Order any other relief that the Department deems meet and just.

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